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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 740612-187

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on March 16, 2009

Signature: Stuart J. F

Typed or printed name: Stuart J. Friedman

Application Number	Filed
10/508,840	March 8, 2005

First Named Inventor: Christophe GENEVOIS

Art Unit	Examiner
2437	Luu T. PHAM

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 24,312.
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

Signature: Stuart J. F

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Telephone number

March 16, 2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☑ *Total of 1 forms are submitted.

PATENT
Docket No. 740612-187

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	
Christophe GENEVOIS	)	Group Art Unit: 2137
Serial No. 10/508,840	)	Examiner: Luu T. Pham
Filed: March 8, 2005	)	
For: SELECTIVE MULTIMEDIA DATA ENCRYPTION	)	

CERTIFICATE OF MAILING OR TRANSMISSION
[37 CFR 1.8(a)]

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Signature: _____

Name: Stuart J. Friedman

REASONS IN SUPPORT OF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant seeks review of the final rejection of claims 40-65 in the above-captioned application. These claims appear at pages 2-5 of the Amendment filed on June 17, 2008. For the following reasons, the rejection of independent claim 40 under 35 USC 102(e) over Candelore must fail because this reference fails to disclose each and every feature of claim 40 as is required to support a rejection under 35 USC 102(e) and because there is clear error in the Examiner's rejections.

The Examiner's reasons for rejecting claim 40 over Candelore are set forth in the Office

Action of September 16, 2008 at pages 3-5. Among his stated reasons for rejecting claim 40, the Examiner asserts that Candelore discloses the step of:

> --inserting the encrypted data packets into the remaining base transport stream at insertion postions ahead in time with respect to the original positions of the particular data packets in the base transport system.--

In support of this assertion the Examiner relies upon the following paragraphs and Figures in Candelore: paragraphs 0037, 0054-0055, 0064-0068, and 0089; Figures 3-4 and 7.

Turning first to the Candelore reference, the Examiner erred in believing that Candelore discloses the step of inserting the encrypted data packets into the remaining base transport stream at insertion positions ahead in time with respect to the original positions of the particular data packets in the base transport system. Candelore teaches an encryption arrangement for multiple encryption of television programs to afford cable operators the flexibility to change or upgrade their content without infringing the rights of legacy vendors. In the Candelore arrangement only certain data packets in the base transport stream are duplicated and the duplicated packets are tagged with secondary PIDs. The legacy PID continues to tag the packets encrypted with legacy encryption (e.g., EA). The secondary PIDs tag packets encrypted by a second encryption method (e.g., EB). Packets with the secondary PID shadow the encrypted packets tagged with the primary PID "The packets making up the encrypted pairs can occur in either order but, in the preferred implementation, maintain sequence with the clear portion of the PID stream." Paragraph [0037]. "Preferably, the EA and EB packets are inserted at the location in the data stream where the single original packet was obtained for encryption so that the sequencing of the data remains essentially the same." Paragraph [0089],

The Examiner argues in the Advisory Action of February 17, 2009 that he has pointed out paragraphs, figures and quoted and highlighted portions that encompass limitations "placing the encrypted data packets in the data stream ahead for their original location." Respectfully, the Examiner misreads Candelore and misapplies it to independent claim 40. Let us examine each of the paragraphs, figures, etc. to which the Examiner refers to demonstrate that Candelore contains no teaching of the limitation which distinguishes claim 40 from the prior art.

Referring to paragraph [0037] it will be appreciated that Candelore discloses an aspect of

virtual dual carriage in which duplicated data packets carry primary PIDs and secondary PIDs. The original PID tags packets encrypted with legacy encryption whereas the secondary PID tags packets encrypted by a second encryption method. The duplicated packets tagged with the primary and secondary PIDs make up an encrypted pair and can occur in either order, i.e., primary followed by secondary or vice versa, but they maintain their sequence with the clear portion of the PID stream. In other words, relative to each other, the primary and secondary packets can be in either order, but they are not inserted at positions ahead in time with respect to their original positions in the base transport stream as is required by claim 40. In this connection, it should be appreciated that only the single original data packet selected for encryption was in the original base transport stream. T he secondary packet was duplicated for the purposes of applying a different encryption system thereto and was not in the base transport stream. Claim 40 requires that each data packet in the base transport stream that is removed and encrypted must be re-inserted into the base transport stream at a position ahead in time with respect to the original position of the particular data packets in the base transport stream. Since the duplicate packet was not in the base transport stream, the position of any original encrypted packet with respect to its duplicate packet is irrelevant. It is only the position of the original encrypted packet with respect to its original position in the base transport stream that matters in claim 40. Accordingly, the Examiner's argument that "the packets making up the encrypted pairs can occur in either order" is specious since it is of no significance with respect to claim 40 whether a data packet is inserted into the stream behind or ahead of its duplicate packet. It only matters that it is inserted into the base transport stream ahead in time with respect to its original position in the base transport stream. It is respectfully submitted that there is no disclosure in paragraph [0037] that any encrypted packet is inserted into the base transport stream ahead in time with respect to its original position in the stream. Therefore paragraph [0037] fails to support the Examiner's position.

Referring to paragraphs [0054-0055] a system is disclosed wherein multiple programs can be dual partially encrypted. However, there is no disclosure that any encrypted packet is inserted into the base transport stream ahead in time with respect to its original position in the stream. Therefore paragraphs [0054-0055] fail to support the Examiner's position.

Turning to paragraphs [0064-0068] and Figure 4, Candelore discloses a dual partially encrypted system wherein some data packets are not encrypted and others are passed for encryption to both packet encryption process A and packet encryption process B. The encrypted packets are then passed for insertion into the output stream. However, there is no teaching or disclosure that any encrypted packet is inserted into the base transport stream ahead in time with respect to its original position in the stream. Therefore paragraphs [0064-0068] and Figure 4 fail to support the Examiner's position.

Paragraph [0089] and Figure 7 disclose an encoding process wherein a transport stream packet is received at a selection station to determine if it is to be encrypted. If it is to be encrypted, it is encrypted under system A to produce encrypted packet EA. The packet is also duplicated and encrypted under system B to produce encrypted packet EB. The encrypted packets EA and EB are then inserted into the output stream. "Preferably, the EA and EB packets are inserted at the location in the data stream where the single original packet was obtained for encryption so that the sequencing of the data remains essentially the same." Once again there is no teaching or disclosure that any encrypted packet is inserted into the base transport stream ahead in time with respect to its original position in the stream. Indeed, to the contrary, the expressly preferred embodiment is that they are re-inserted in their original positions. Therefore paragraphs [0089] and Figure 7 fail to support the Examiner's position. Moreover, the statement that it is preferred that the encrypted packets be re-inserted at their original positions in the stream should not be read to be a disclosure that the encrypted packets can be re-inserted ahead in time of their original positions. There is no such disclosure in Candelore and any such suggestion is nothing but mere speculation, which is insufficient to support a rejection under 35 USC 102. Indeed, equivalent speculation might be that the encrypted packets are re-inserted into the stream at positions behind in time with respect to their original positions.

Finally, Figure 3, which is described in paragraph [0058] shows a cable system head-end wherein a switch routes packets to be encrypted to a system A encrypter and to a system B encrypter. The encrypted system A and B packets are combined with the clear packets and broadcast over the cable system. There is no teaching or disclosure that any encrypted packet is inserted into the base transport stream ahead in time with respect to its original position in the

stream. Therefore Figure 3 and paragraph [0058] fail to support the Examiner's position.

It will be appreciated, contrary to the Examiner's assertions, that there is no disclosure or suggestion in Candelore of the the step of:

> --inserting the encrypted data packets into the remaining base transport stream at insertion postions ahead in time with respect to the original positions of the particular data packets in the base transport system.--

Accordingly, the rejection of claim 40 as anticipated by Candelore under 35 USC 102(e) is in error and should be reconsidered and withdrawn.

All of remaining claims 41-55 are dependent, directly or indirectly, from independent claim 40 and are allowable because claim 40 is allowable. As for the rejection of claims 42-44 and 64-65 under 35 USC 103(a) as unpatentable over Candelore in view of Maillard et al, it is clear from the final office action at paragraph 11 that Maillard et al was cited only for its disclosure regarding the event decryption key. Clearly, Maillard et al contains no teaching or suggestion to place the encrypted data packets into the base transport stream ahead of their original location. Therefore, no combination of Candelore and Maillard et al can make up for the deficiencies in Candelore previously discussed with respect to claim 40. As for the rejection of claims 51-53 under 35 USC 103(a) as unpatentable over Candelore in view of Thompson et al, it is clear from the final office action at paragraph 12 that Thompson et al was cited only for its disclosure regarding a head-end encoder including a Common Interface CI. Clearly, Thompson et al contains no teaching or suggestion to place the encrypted data packets into the base transport stream ahead of their original location. Therefore, no combination of Candelore and Thompson et al can make up for the deficiencies in Candelore previously discussed with respect to claim 40.

It is, therefore, respectfully urged that independent claim 40 is patentable over Candelore and that dependent claims 41-65 are likewise allowable. The allowance of claims 40-65 or the reopening of prosecution is, therefore, respectfully requested.